IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO.1123 OF 1996

M/s. R. Tulsidas .. Appellant

vs.

The Union of India,
through the General Manager,
Western Railway. ..Respondent.

G.V.Nagarseth, Advocate for the Appellant.

None for the Respondent.

CORAM : D.G.DESHPANDE, J.

DATED : 20th January, 2004.

P.C. :

1. Heard learned Advocate for the Appellant. Nobody is present for the respondent. The appellant was the person who had lodged his claim before the Railway Claims Tribunal for the recovery of compensation for the damage caused to his consignment namely 118 bags of Basmati rice. The goods were entrusted to the railways for

delivery on 18.8.1989. The goods were delivered in damaged condition on 31.8.1989. The tribunal held that the limitation for claim of compensation was three years from the date of delivery and therefore the claim should have been filed by 31.8.1992, but it was actually filed on 31.10.1992 and therefore the application was time barred. The learned Counsel for the appellant contended that the Railway Claim Tribunal Act came into force on 8.11.1989. Prior to that i.e. on 25.6.1992 he had given notice under section 80 because in the absence of the tribunal the appellant would have been required to file the suit against the Railways and Union of India and therefore as per Section 80 notice was necessary. Therefore he had given the notice as required by the C.P.C. and filed suit two months after the said notice i.e. before the expiry of the period of limitation after two months, then dismissal of the suit on the ground of limitation was totally wrong and uncalled for.

2. My attention was also drawn by the learned Counsel to the judgment wherein the findings on

all issues were given to the tribunal in favour of appellants, but the suit claim was dismissed only on the ground of limitation. The tribunal held that after 8.11.1989 when the Railway Claims Tribunal came into existence there was no necessity of notice under Section 80 of Cr.P.C., I do not find that this is a proper reasoning to reject the claim. When the notice was given, the Railway Claim Tribunal was not in force. It was given as required by the statute then existing in force and therefore if the claim was filed after taking into consideration two months period of the statutory notice then the tribunal committed a mistake in rejecting and dismissing the claim on the ground of limitation.

3. As a result this appeal is required to be allowed. The claim was dismissed on the ground of limitation as stated by me earlier, however, all the findings regarding loss and damage sustained are in favour of the appellant and therefore the following order.

. The appeal is allowed with cost and the

claim of the appellant before the tribunal stands granted in full with cost throughout and interest at 9% from the date of claim till payment.

(D.G.Deshpande, J.)